

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>PATRICK F. KANE</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,029,279
<b>ROSEL COMPANY, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>EMPLOYERS REINSURANCE CORP.</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals the November 20, 2006 preliminary hearing Order For Medical Treatment of Administrative Law Judge Pamela J. Fuller.

**ISSUE**

Did claimant suffer a compensable psychological injury as a result of the September 12, 2005 accident?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should be affirmed.

Claimant worked as an operator/rigger and engineers assistant for respondent, when, on September 12, 2005, he was seriously injured, and his supervisor and close friend, John Combs, was killed when an explosion occurred at a drill site while claimant and Mr. Combs were rigging a perforating gun. Claimant was knocked temporarily unconscious and suffered injuries to his head, back and both legs, and suffered multiple metal fragment wounds. The injuries suffered by Mr. Combs were extensive, including both legs being nearly blown off. Claimant was with Mr. Combs for about 30 minutes before the ambulance arrived, and during the ride to the hospital, Mr. Combs suffered a heart attack. He later died while being transported to a hospital in Wichita. Claimant testified that Mr. Combs was not only his supervisor, but also his best friend.

Shortly after the accident, claimant, while receiving medical treatment, also began psychological treatment with psychiatrist Michelle Hausheer, M.D. Claimant was diagnosed with major depressive disorder, single episode, severe.<sup>1</sup> He was later diagnosed with post traumatic stress disorder (PTSD). Claimant also had several preexisting conditions stemming from a traumatic childhood, the result of having an abusive father.

Respondent argues that claimant's psychological condition stems from claimant's observation of the tragic death of his best friend, and not from any physical injuries suffered in the accident. Respondent accurately argues that a psychological injury is only compensable if it stems from a physical injury.<sup>2</sup>

Respondent's argument that claimant's psychological trauma stems from solely the observation of his friend's injuries is misplaced in this record. It is true that claimant suffered deep mental trauma from that accident. But it is also true that claimant suffered severe physical injuries as well. Dr. Hausheer's clinical notes record not only claimant's concerns and resulting nightmares from the death of his friend, but also significant frustration and anxiety resulting from the blurred vision to both of his eyes and the permanent numbness to claimant's right leg. It is clear from the psychiatric notes that claimant's psychological stress stems not only from the trauma of seeing a good friend severely injured, but also the physical trauma associated with the sight difficulties and the numbness of claimant's right leg. The added trauma of having metal fragments throughout claimant's body, which are slowly working themselves through claimant's skin, is enough to convince this Board Member that claimant's ongoing need for psychological treatment stems not only from the traumatic loss of a friend, but also from traumatic physical trauma to claimant himself. This Board Member, therefore, finds that the Order For Medical Treatment issued on November 20, 2006, should be affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>3</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

**WHEREFORE**, it is the finding, decision, and order of this Appeals Board Member that the Order For Medical Treatment of Administrative Law Judge Pamela J. Fuller dated November 20, 2006, should be, and is hereby, affirmed.

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<sup>1</sup> P.H. Trans., Resp. Ex. 1.

<sup>2</sup> *Followill v. Emerson Electric Co.*, 234 Kan. 791, 674 P.2d 1050 (1984).

<sup>3</sup> K.S.A. 44-534a.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 2007.

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BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant  
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier  
Pamela J. Fuller, Administrative Law Judge